power to make Rules for the purpose of regulating the procedure of the Committee and some Rules have been made, *vide* Kedah Legal Notification 4/1955, but apparently no Rules have been made for regulating the modes in which orders of the Committee may be executed and it is this which has contributed to the plaintiffs' mistake in taking this matter to the Sessions Court. For the future it might be thought desirable to have such Rules made.

In conclusion, the learned President's order is set aside and for it there is substituted an order that the plaintiffs' claim be dismissed with costs here and in the court below. Deposit to be paid out to the appellant.

Claim dismissed.

Solicitors:—*Jayadeva & Zahir.*

HAJI JUNUS v. CHIK & ANOR.

[O.C.J. (Suffian J.) June 29, 1963]

[Alor Star—Kedah Civil Suit No. 106 of 1957]

Practice and Procedure—East Coast Rules, 1948, O.2 r.4—Application under—Preliminary objection—Declaration that plaintiff is owner of undivided half share —Allegations of fraud misrepresentation etc. in pleadings—Whether necessary to comply with exact wording of s.43 of Kedah Land Enactment No. 55.

Kedah Land Enactment No.55 s.43.

The deceased was the registered proprietor of the land in question. His widow, the second defendant, became the administratrix of his estate in 1928. The widow as administratrix entered into two separate agreements with the plaintiff for the sale of a half undivided share in the land for $400 and handed over possession to the plaintiff (who has been in occupation since) with an undertaking on her part to complete the transfer of the half undivided share to the plaintiff as soon as an order of the Court had been obtained. After several requests the plaintiff commenced proceedings and obtained judgment against her on May 16, 1957 with which she did not comply. The plaintiff then discovered on enquiring that on February 8, 1956 the first defendant had become the registered proprietor of 34/48th share in this land — as to 13/48th as a beneficiary and as to 21/48th as a purchaser from the Baitulmal — and that on the same day the administratrix, one R and one S the co-owners of the land had transferred all the land to the first defendant for $6,000. The plaintiff now claimed that he be declared owner of the half undivided share in the land and that the first defendant do transfer to him this half share failing which the Assistant Registrar of this court should be empowered to do so.

The first defendant raised two preliminary objections — (a) that the plaintiff had not employed the precise words used by section 43 of the Kedah Land Enactment to bring his case within that section and (b) that the plaintiff's suit against the first defendant was misconceived, and that the plaintiff's only remedy was to have the damages suffered by him assessed by the Assistant Registrar in compliance with the judgment.

Held: (1) the pleadings in this case complied with Order 2 rule 4 of the East Coast Rules. It is not necessary for the plaintiff to use the words "fraud or misrepresentation or forgery or insufficient or void instrument" in his statement of claim;

(2) the earlier civil suit did not in any way impinge upon the judgment because here what was sought was a declaration that the plaintiff was the owner of a half undivided share in the land and that the first defendant be ordered to transfer to the plaintiff his half share. The plea of *res judicata* could not avail against the first defendant because he was not a party to the earlier judgment.

Observations on interpretation of East Coast Rules.

Cases referred to:—

(1) *Lever Brothers Ltd.* v. *Bell* [1931] 1 K.B. 557.

(2) *Shaw* v. *Shaw* [1954] 2 Q.B. 429.

RULING ON PRELIMINARY OBJECTIONS.

G. H. Goh for the plaintiff.

A. Jayadeva for the 1st defendant.

Cur. Adv. Vult.

Suffian J.: This is a ruling on two preliminary objections raised by Inche Jayadeva, counsel for the first defendant.

This suit was brought under the East Coast Rules (1948 Rule No. 2), Federal *Gazette* Notification No. 2011 of 1948 made applicable to Kedah from 1.8.52 by Legal Notification No. 354/52 dated 7th June 1952.

The plaintiff's case as revealed by the pleadings is as follows. Senawi, hereinafter referred to as the deceased, was the registered proprietor of the land in question and when he died the land formed part of his estate. His widow, the second defendant, became the administratrix of his estate in 1928. On two separate dates she as administratrix entered into two separate agreements with the plaintiff for the sale of a half undivided share in the land for $400, and handed over possession to the plaintiff, who has been in occupation without interruption ever since.

The second defendant undertook to complete the transfer of the half undivided share to the plaintiff as soon as Court permission had been obtained.

Despite several requests by the plaintiff the second defendant failed to carry out the terms of the agreements.

In 1954 the plaintiff sued her in this court in Civil Suit No. 113 of 1954 for specific performance of the agreements and on the 16th May, 1957 he obtained judgment against her.

The second defendant did not comply with this judgment. The plaintiff discovered on enquiry that on the 8th February 1956 the second defendant had become the registered proprietor of 34/48th share in this land, as to 13/48th as

a beneficiary of the deceased's estate and as to 21/48th as a purchaser from the Baitulmal, and that on the same day she, Ramlah and Saadiah, the other co-owners of the land had transferred all the land to Chik for $6,000.

On 28th December, 1957, the plaintiff brought this action against Chik the first defendant and the second defendant. Before the hearing Chik died and his widow has been appointed as his legal representative in this suit.

The plaintiff claims —

(a) that he be declared owner of a half undivided share in the land; and

(b) that the first defendant, now the registered proprietor, do transfer to him this half share, failing which the Assistant Registrar of this court should be empowered to do so.

The crux of the plaintiff's case is given in paragraphs 11 and 12 of his amended statement of claim. There he says that Chik and the second defendant had acted in collusion, that Chik was his (the plaintiff's) neighbour, that Chik knew or ought to have known that the half undivided share in the land had been sold to the plaintiff by the second defendant more than 28 years ago and that the transfer to Chik was not a genuine transfer.

The second defendant in her written defence said this, that being old and deaf she had to rely on Chik for the distribution of the estate of her deceased husband, that she and the other co-owners had transferred the land to Chik but not for $6,000, that the first defendant paid her only $50 and paid Ramlah and Saadiah $100 each, that the consideration of $6,000 was stated in the transfer only for the purpose of stamp duty, that Chik had promised to transfer a half share in the land to the plaintiff who had then filed Suit No. 113 of 1954 against her and another specified portion to another person, Awang, in satisfaction of a judgment Awang had obtained in Civil Suit No. 23 of 1954 and Chik was to retain only the balance, that Chik had carried out his promise to transfer the specified portion to Awang but not his promise to transfer the half share to the plaintiff and that therefore she consented to judgment on the plaintiff's claim.

Inche Jayadeva's first preliminary objection on behalf of the first defendant is this. The first defendant is now the registered proprietor. Therefore according to section 43 of the Kedah Land Enactment his title is indefeasible. It is not indefeasible only in the case of fraud or misrepresentation to which he is proved to be a party. Or the registration is void only if it has been obtained by forgery or by means of an insufficient or void instrument. The plaintiff has not employed the precise words used by section 43 to bring his case within that section.

His second preliminary objection is this. In Civil Suit No. 113 of 1954 the plaintiff has already obtained judgment against the second defendant as administratrix of her deceased husband's estate. That judgment says that the second defendant was to transfer to the plaintiff a half share in the land.....

"if transferable.....or alternatively the (second) defendant had to pay to the plaintiff the damages suffered by the plaintiff to be assessed by the Assistant Registrar of this Honourable Court."

As it happened, by the time judgment was obtained the land having been transferred to Chik and the second defendant was no longer in a position to transfer it to the plaintiff and therefore, it is submitted, the plaintiff's only remedy is to have the damages suffered by him assessed by the Assistant Registrar in compliance with this order. It is said that the bringing of this suit against the first defendant is misconceived.

As to the first preliminary objection I rule that the pleadings herein are in order.

Order 2 Rule 4(d) of the East Coast Rules states —

"Every plaint shall contain a concise statement in numbered paragraphs of the facts relied upon without any argument or narrative."

This is not very much different from Order 19 Rule 4 of the present Supreme Court Rules which reads —

"Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim.....but not the evidence by which they are to be proved....."

In *Lever Brothers Ltd.* v. *Bell*[1] the plaintiffs claimed rescission of two agreements made with the defendants on the ground of "mutual mistake" but they did not allege specifically in their pleadings mutual mistake as a ground for treating the agreements as void. It was held that this was not fatal to the claim, Scrutton L.J. at page 582 saying —

"In my opinion the practice of the courts has been to consider and deal with the legal result of pleaded facts, though the particular legal result alleged is not stated in the pleadings, except in cases where to ascertain the validity of the legal result claimed would require the investigation of new and disputed facts which have not been investigated at the trial."

Here if the facts alleged by the plaintiff and admitted by the second defendant are believed, then it is open to the court to infer therefrom the particular legal result which the plaintiff seeks to put on them. It is unnecessary for the plaintiff to specifically use the words fraud or misrepresentation or forgery or insufficient or void instrument in his statement of claim.

Again in *Shaw* v. *Shaw*[2], a case where the plaintiff sought damages for breach of an implied warranty in a contract but omitted to allege "an implied warranty" in the pleadings though she alleged all the material facts, Denning L.J. said at page 441 —

"So long as those facts are alleged, that is sufficient for the court to proceed to judgment without putting any particular legal label upon the cause of action."

In construing the East Coast Rules it is, I think, essential to bear in mind their principal object and that was to simplify civil proceedings to suit the requirements of an unsophisticated peasantry who did not have the wherewithal to call on professional help (for instance the Rules even allowed subject to certain conditions pleadings to be in Malay). Also, like the present-day Supreme Court Rules, one of their objects was to prevent the opposite party from being taken by surprise and here I do not think that Chik or his widow can say that they have been taken by surprise. Also, the East Coast Rules have nothing like rule 6 of Order 19 of the Rules of Supreme Court which requires particulars to be stated where misrepresentation or fraud is relied on.

As to the second preliminary objection, the agreement between the plaintiff and the second defendant has, it is true, been adjudicated on in Civil Suit No. 113 of 1954 and judgment has been entered against the second defendant. It is equally true that that judgment says that if the land could not be transferred in compliance with that judgment then the plaintiff was entitled to damages against the second defendant, such damages to be assessed by the Assistant Registrar. But in my opinion the instant civil suit does in no way impinge upon that judgment because here what is sought is, first, only a declaration that the plaintiff is the owner of a half undivided share in the land and, secondly, that the first defendant, now the registered proprietor of the land, be ordered to transfer to the plaintiff this half share. In any event the plea of *res judicata* can only be taken advantage of by the second defendant against whom the earlier judgment had been obtained. She does not however raise it. It cannot be taken advantage of by the first defendant who was not a party to it. Accordingly this preliminary objection is also overruled.

This case will proceed to trial on a date to be fixed.

Order accordingly.

Solicitors:—*G. H. Goh & Co.; Jayadeva & Zahir.*

SAPIAHTOON v. LIM SIEW HUI

[O.C.J. (Buttrose J.) July 4, 1963]

[Singapore — Suit No. 1400 of 1959]

Contract—Building contract—Lump sum contract—House built not strictly to specifications and left uncompleted—Possession by plaintiff—Subsequent employment of another contractor to complete—Action for breach of contract—Counter-claim for balance of lump sum.

In a lump sum building contract it does not necessarily mean that the entire performance is a condition precedent to payment. It is not every breach of the promise to complete the work which absolves the employer from his promise to pay the price but only a breach which goes to the root of the contract, such as an abandonment of the work when it is only half done. If it is not one which goes to the root of the matter, the employer must pay the price and bring a cross-claim for defects and omissions or alternatively set them up in diminution of the price.

Cases referred to:—

(1) *Building Estate Ltd.* v. *A. M. Connor* [1958] M.L.J. 173.

(2) *Hoening* v. *Isaacs* [1952] 2 All E.R. 176.

ACTION FOR BREACH OF CONTRACT.

R. E. Redrup for the plaintiff.

R. Murugason for the defendant.

Cur Adv. Vult.

Buttrose J.: In this action the plaintiff, a married woman—a Malay—claims from the defendant, who described himself as a building contractor, damages for breach of contract in respect of a house at Coronation Road built for her by the defendant for $8,500 pursuant to an agreement in writing dated the 2nd November 1958. The plaintiff went into occupation of the house early in April 1959 and has lived in it ever since but she has refused to pay the balance of the purchase price. She alleges that the sum of $7,000 which she has paid to the defendant on account of the purchase price was paid upon a consideration which has failed and that the erection of the house was not completed, that much of the work was defective and of inferior quality and that the timber used was not in accordance with the terms of the contract. The plaintiff further claims special damages in the sum of $5,840 incurred in having the house completed and the defects remedied, including an architect's fee. The defendant denies the allegations and counter-claims the sum of $1,500 being the balance of the purchase price.

The position was that under the agreement to which I have referred the defendant was to build a house for the plaintiff "similar to that of Che' Safarwan at Geylang Serai for a sum of $8,500 including all labour charges, materials and water laid". The house was to be completed before April 1959 and it was also stated that the plaintiff was not to be responsible for any further payment except for the sum of $8,500 only.